

REMARKS

The specification has been amended to set forth the current status of the patent applications identified in the "Cross-Reference to Related Applications" and to properly identified the relationship between the applications and the provisional applications.

Claim 1 has been amended to specify that one strand of the nucleic acid hybrid comprises an activatable oligonucleotide having a non-extendible 3' terminus. Support for an activatable oligonucleotide having a non-extendible 3' terminus can be found throughout the specification.

Claims 5, 7 and 9 have been canceled.

Claim 12 has been amended to specify that the probe comprises an activatable oligonucleotide having a non-extendible 3' terminus and thus one strand of the hybrid also comprises this oligonucleotide. Support for an activatable oligonucleotide having a non-extendible 3' terminus can be found throughout the specification.

Claim 20 has been amended to specify that the probe comprises an activatable oligonucleotide having a non-extendible 3' terminus and thus one strand of the hybrid also comprises this oligonucleotide. Support for an activatable oligonucleotide having a non-extendible 3' terminus can be found throughout the specification.

Claim 23 has been canceled as being directed to a non-elected invention without prejudice to filing a divisional application.

Claim 27 has been amended to specify that one strand of the nucleic acid hybrid comprises an activatable oligonucleotide having a non-extendible 3' terminus. Support for an activatable oligonucleotide having a non-extendible 3' terminus can be found throughout the specification.

Applicants submit that the above amendments are not new matter, and their entry is requested.

The Examiner sets forth the restriction requirement of the claims of the application into two groups. Applicants affirm the election of Group I, which Applicants believe should be claims 1-22 and 24-28. This election is made without traverse.

The Examiner objected to the specification for the current status of the applications on page 1. The amendment of the specification obviates this objection, and its withdrawal is requested.

The Examiner has rejected claims 5 and 27 under 35 U.S.C. § 112, second paragraph for being indefinite. Applicants have canceled claim 5 and amended claim 27 to supply the missing word. It is submitted that these amendments obviate this rejection.

In view of the above amendments and remarks, Applicants submit that the claims are definite to a skilled artisan. Withdrawal of this rejection is requested.

The Examiner has rejected claims 1-22 and 23-27 under 35 U.S.C. § 112, first paragraph for lack of written description. The Examiner contends that the use of a fluorescence-modulating oligonucleotide (claim 5) and the use of a capture label (claim 7) are not supported by the specification and hence are new matter. The Examiner also contends that the specification only supports the use of activatable oligonucleotides having a non-extendible 3' terminus and does not support the claims which do not require the use of such oligonucleotides, which also is new matter.

Without acceding to the propriety of this rejection and in order to expedite allowance of the application, Applicants have canceled claims 5 and 7 and have limited the claims to the use of activatable oligonucleotides having a non-extendible 3' terminus. It is submitted that these amendments obviate this rejection.

In view of the above amendments and remarks, Applicants submit that the claims are fully supported by the written description. Withdrawal of this rejection is requested.

The Examiner rejected claims 1-22 and 24-27 for obviousness-type double patenting over claims 1-72 of U.S. Patent No. 7,033,763 and claims 1-98 of U.S. Patent No. 6,534,269. In response to this rejection, Applicants are submitting a Terminal Disclaimer. Applicants submit that this Terminal Disclaimer obviates this rejection. Withdrawal of this rejection is requested.

In view of the above amendments and remarks, it is believed that the claims satisfy the requirements of the patent statutes and are patentable over the prior art. Reconsideration of the

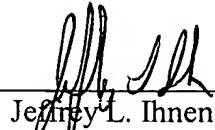
Application Serial No. 10/798,844
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instant application and early notice of allowance are requested. The Examiner is invited to telephone the undersigned if it is deemed to expedite allowance of the application.

Respectfully submitted,

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